

Volusia Growth Management Commission Meeting

MINUTES FOR MEETING HELD

Wednesday, November 19, 2014

Thomas C. Kelly Administration Center
Frank T. Bruno Jr. County Council Chambers
123 W. Indiana Avenue
DeLand, FL

MEMBERS PRESENT

James Wachtel, Chairman
Gerald Brandon, Vice Chairman
Roger Sonnenfeld, Secretary
Sandy Lou Gallagher
Loretta Arthur
Robert Lovelace
Robert Storke
Don Romanik
Debbie Connors
Richard Kane
Douglas deLeon
Glyn Slay
Sandra Walters
William Pouzar

REPRESENTING

Volusia County
Ormond Beach
Lake Helen
Deltona
Holly Hill
New Smyrna Beach
Orange City
Ponce Inlet
Port Orange
South Daytona
Volusia County
Volusia County
Volusia County
Volusia County

MEMBERS NOT PRESENT

Rich Walton
Robert Lott

Daytona Beach
Edgewater

NON-VOTING MEMBERS

Sara Lee Morrissey (not present)
Steven Fitzgibbons (not present)

Volusia Co. School Board
SJRWMD

OTHERS PRESENT

Paul Chipok, GrayRobinson, General Counsel
Merry Chris Smith, VGMC Operations Manager

CALL TO ORDER

VGMC Chairman James Wachtel called the meeting to order at 7:00 p.m.

ROLL CALL

Roll call was taken and it was determined there was a quorum present. Chairman Wachtel welcomed newly appointed member William Pouzar representing Volusia County.

CITIZEN COMMENTS

There were no citizens present who wished to speak.

APPROVAL OF MINUTES

Debbie Connors made a motion to approve the minutes of the September 24, 2014 regular meeting of the commission as presented; seconded by Glyn Slay. Motion carried unanimously.

PUBLIC HEARING

There were no items scheduled for public hearing.

REPORT FROM PLANNING CONSULTANT

No report at this time.

REPORT FROM LEGAL COUNSEL

In the absence of planning staff, Paul Chipok, General Counsel to the VGMC, provided a brief summary of two new large scale amendment applications recently received by the VGMC, #14-037 from the City of Edgewater, and #14-038 from Volusia County. Both applications are presently under review by VHB. Mr. Chipok also briefly explained the process and timeline relating to new applications.

REPORT FROM COMMISSION OPERATIONS MANAGER

Ms. Smith stated the 2015 meeting schedule should be finalized in December and will be published and distributed to each of the members.

REPORTS OF COMMISSION CHAIRMAN

No report at this time.

REPORTS OF COMMITTEES

POP Committee Report: Gerald Brandon, Chairman of the POP Committee, reported the committee has met several times recently. He stated five proposals were received in response to RSQ #14-02 for contract planning services and two firms were interviewed. Following evaluation by the committee, a recommendation to award the planning contract to Littlejohn will be presented to the commission later in the meeting.

Mr. Brandon also stated that 2015 will be another busy year for the POP Committee, which will include an RSQ for legal services.

Budget Report: Roger Sonnenfeld, Chairman of the Budget Committee, stated a 2013-14 YTD budget expense worksheet was included in the agenda package and the numbers should be close to final for the fiscal year. He reported we exceeded the legal ad budget slightly, but overall the commission is in good shape, finishing the year at approximately 62% of the total approved budget.

OLD BUSINESS

There was no old business for discussion.

NEW BUSINESS

1) Consider award of contract to Littlejohn for contract planning services

Mr. Brandon first thanked the committee and officers for their time and efforts throughout the RSQ process. Mr. Brandon stated the committee is recommending the commission approve the proposed planning contract with Littlejohn, which comes to the commission in the form of a motion and second. There being no questions or discussion, the question was called and the motion to approve the planning contract with Littlejohn as presented was approved unanimously.

Chairman Wachtel and Mr. Brandon asked the staff of Littlejohn who were present to introduce themselves. Chris Dougherty, who will serve as the Designated Project Manager to the VGMC, introduced himself as well as George Kramer, Planning Director, and Pat Tyjeski, Senior Planner. Mr. Dougherty thanked the commission for the opportunity to work with the VGMC and stated they are excited to get started.

2) Overview of VGMC Presentation

Mr. Chipok presented an overview of the VGMC which included the comprehensive planning process in general, the comprehensive plan amendment process in Volusia County, a history of the VGMC, the application process, the hearing process, and how zoning fits into the VGMC process which he stated is the exception rather than the rule. A copy of the overview presentation was included in the agenda package.

Throughout the course of the presentation, several comments and questions were raised which included the following:

Chairman Wachtel commented that the overall State comprehensive plan amendment process is highly technical, legalistic and complicated. He stated that individual VGMC members are not required to know the entire process, adding that we rely on our planning and legal consultants to know the process and advise the commission accordingly. Mr. Chipok added that staff takes the commission through the process and the members' job is to look at and make decisions on the

policies. He stated if there is a question as to whether or not an amendment is consistent with comprehensive plans of neighboring jurisdictions, those issues will come before the full commission. The VGMC task is to look at policies and determine if the proposed amendment is consistent. If it is not, then we look to see if it can be made to be consistent. In those cases, Mr. Chipok stated VGMC staff works with the local governments and affected parties to address the inconsistencies through conditions which then come before the commission at a public hearing.

Mr. Chipok spoke in detail concerning mixed-use land use categories and the impact on review by the VGMC. He explained that when a comprehensive plan amendment is reviewed by the VGMC, it must be measured based on maximum impacts. Mixed-use categories may consist of various levels of residential and commercial development, and therefore, the maximum density the area could potentially generate must be utilized in the analysis to determine impacts. In most cases, he stated the area is not intended to be developed to the maximum potential density. In these situations, Mr. Chipok stated the VGMC may conditionally approve the mixed-use land use through Resolution with the condition that prior to any permitted development on the property, it must come back as a planned development and the VGMC must review the planned development. A planned development is a zoning category, however, since it establishes the actual use of the property, the impacts can be reviewed and measured to determine consistency at that point in the process. Mr. Chipok stated the VGMC does not generally review zoning matters, however, this is one exception when the VGMC does look at zoning.

Commissioner Walters asked Mr. Chipok if there was any legal requirement for the VGMC to craft conditions of approval on an amendment that is found to be inconsistent at a public hearing. Mr. Chipok responded that the nature of the VGMC is to foster intergovernmental cooperation and coordination. He stated the applications are reviewed for consistency with adjacent jurisdiction comprehensive plans based on the established criteria. If an application received is found to be not consistent, then it is reviewed to determine if it can be made to be consistent through conditions of approval.

3) Sunshine Law and Code of Ethics Presentation

Mr. Chipok made a presentation on the Sunshine Law and Code of Ethics. A copy of the presentation was included in the agenda package.

Throughout the course of the presentation, several comments and questions were raised which included the following:

Clarification was made that VGMC members are required to file an annual Statement of Financial Interest with the State. The presentation material will be revised and distributed to the members.

With respect to voting conflicts, Mr. Chipok stated if a conflict exists, a member must abstain from voting and comply with disclosure requirements. He explained that a conflict is when a member would inure to their own special financial gain or loss. Mr. Chipok provided an example where a voting conflict would exist if a member of the commission was a real estate

broker involved with the sale of a property that was contingent upon a comprehensive plan amendment.

Commissioner Sonnenfeld commented on situations where a member may have a measure of discomfort voting due to potential personal or professional impacts. Mr. Chipok stated a conflict is narrowly defined to inure of private financial gain or loss, so if a member stands to make or lose money on a particular deal, a conflict would exist.

Commissioner Lovelace asked if the members have an opportunity to explore whether or not they have a conflict of interest if they are uncertain. Mr. Chipok responded if a member has a question relating to a potential conflict on a matter coming before the commission, procedurally they should submit the information to the VGMC office and it will be forwarded to him for review. Mr. Lovelace commented that a conflict exists if there is a financial gain or loss on the current application, however, asked what if there was a prior relationship with the applicant, or reasonable anticipation of a future relationship with the applicant. Mr. Chipok responded that if a member casts a vote with the expectation of a future relationship with the applicant, it should be considered a conflict. With respect to previous relationships with an applicant, Mr. Chipok stated that should not present a conflict.

Mr. Sonnenfeld stated there can be a lot of gray area in relationships, and if a member is present at a meeting and no conflict exists by definition, they must vote. He stated if a member is uncomfortable voting on a matter for other reasons, they have the option of not attending.

Mr. Chipok stated that if a member thinks they may have a conflict, they should disclose it at the meeting and file the necessary paperwork.

Commissioner Pouzar asked if a member owned a piece of property in the area of a proposed amendment that if approved would increase the value of the member's property, would that constitute a conflict. Mr. Chipok stated if it were a city initiated change, there should be no conflict since there is no particular gain or loss the member was in control of. However, if the member was part of a group of landowners who put forth the comprehensive plan amendment to the local government, then yes there would be a conflict.

Mr. Chipok stated the situations are very fact specific and the members should use their best judgment in determining if a conflict exists. He suggested erring on the side of being more conservative in saying yes there is a conflict, than to not disclose a conflict and it be questioned later.

With respect to ex parte communications, Mr. Chipok stated the VGMC has no specific rules prohibiting ex parte communications, however, there are risks. Ex parte communications can potentially be viewed as a denial of due process, and also the presumption that the party against whom the decision was made was prejudiced by the ex parte communication. He also discussed recommended legal guidelines with respect to both written and oral ex parte communications.

Mr. Brandon stated if a member is engaged in ex parte communications either orally or in writing, the member should disclose it at the meeting for the record. Mr. Chipok concurred,

adding that by disclosing at the meeting you've been approached on the subject matter, anyone who wishes to further question the member on the ex parte communication may do so, which should cure any potential defect in the due process system.

Commission Slay asked Mr. Chipok if a commission member receives a communication from a member of the public, either orally or in writing, on a matter outside of the scheduled meeting where it is to be heard, does the member have a duty to respond. Mr. Chipok stated there is no duty to respond.

With respect to notice requirements, Mr. Brandon stated a scheduled meeting can be canceled due to emergency such as a hurricane. In those situations, the individual commission members are notified, and for the benefit of the public, a notice is posted on the door at the location of the scheduled meeting.

With respect to ex parte communications, Mr. Lovelace stated he often will review public records relating to the VGMC application, such as minutes from the local government planning boards. He asked Mr. Chipok for confirmation that this action is not considered an ex parte communication. Mr. Chipok stated that type of information is general public information, however, if the information contained in the materials becomes the fulcrum in his decision on the amendment, then he should disclose the source material at the commission meeting. Mr. Lovelace asked if members should not review outside records and rely on the information provided by staff. Chairman Wachtel suggested the appropriate action may be to forward the information to the VGMC office for staff review to determine any potential impacts on the planning staff findings and report. Mr. Chipok concurred.

General discussion continued. Mr. Chipok generally stated that if a member utilizes other sources of information outside of the scope of the information and testimony at a public hearing to base their decision, then that source material should be disclosed at the hearing. He added that the better course of action would be to forward that information to the VGMC office for review by staff in advance of the hearing.

Mr. Chipok's presentations were concluded at this time.

COMMISSIONER REQUESTS OR REMARKS

Mr. Brandon thanked the Littlejohn staff for applying and accepting the VGMC planning consultant contract.

Chairman Wachtel presented Mr. Brandon with an engraved desk top clock in recognition and appreciation for his service as Chairman of the VGMC for the preceding two years. The commission members applauded his service, and Mr. Brandon thanked them for the gift and recognition.

Chairman Wachtel stated the next regular meeting is set for December 17, 2014, however, it does not appear there will be any applications scheduled for public hearing and the meeting will likely be canceled.

ADJOURNMENT

There being no further business, Chairman Wachtel wished everyone a Happy Thanksgiving and the meeting was adjourned at 8:43 p.m.



Attest: Secretary



Chairman